

0A391 - Y46

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

STEPHEN P. CUNNINGHAM
5560 Cloverdale Drive
Galena, OH 43021
Plaintiff,

vs.

OHIO PUBLIC EMPLOYEES
RETIREMENT SYSTEM
277 East Town Street
Columbus, OH 43215-4642

Defendant.

CASE NUMBER:

JUDGE:

**COMPLAINT FOR FMLA
INTERFERENCE AND
RETALIATION**

**JURY DEMAND ENDORSED
HEREON**

Plaintiff, Stephen P. Cunningham, by and through the undersigned counsel, and for his Complaint against Defendant Ohio Public Employees Retirement System ("OPERS"), states as follows:

PARTIES

1. Mr. Cunningham was employed by OPERS for more than 21 years until his unlawful termination in November 2010. For approximately 15 years prior to his unlawful termination from OPERS, Mr. Cunningham received treatment for depression.

2. OPERS is an agency or instrumentality of the State of Ohio and has consented to suit in the Court of Common Pleas pursuant to R.C. § 145.09.

STATEMENT OF FACTS

3. OPERS hired Mr. Cunningham as a Field Representative/Counselor on January 3, 1989. For most of his career with OPERS, Mr. Cunningham was highly productive and

EXHIBIT A

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successful. He received several promotions during his career, eventually attaining the position of Assistant Director of all Member Services

4. During or about summer 2009, Mr. Cunningham's depression worsened.

5. At his mid-year performance appraisal in June 2010, Mr. Cunningham received a "needs improvement" rating for the first time.

6. On September 3, 2010, Mr. Cunningham was suspended for three days by his direct supervisor, Julie Reneau, for conduct during a staff meeting which Ms. Reneau described as including a morose and monotone attitude and delivery.

7. On September 10, after returning from the suspension, Mr. Cunningham met with Ms. Reneau and agreed to a corrective plan of action. During the remainder of his employment with OPERS, Mr. Cunningham made significant progress toward each of his corrective action plan goals.

8. On or about November 9, 2010, Mr. Cunningham requested in writing a leave of absence for the period of November 17, 2010 through February 14, 2011 pursuant to the Family and Medical Leave Act. The request for leave was based on Mr. Cunningham's increasing depression and anxiety.

9. OPERS granted Mr. Cunningham's request for FMLA leave to begin at the end of the day on November 17, 2010.

10. Shortly before the end of the workday on November 17, Ms. Reneau came to Mr. Cunningham's office to tell him that his performance appraisal was complete and to ask if she could call him on November 19 to discuss the appraisal.

11. Mr. Cunningham declined to discuss his performance evaluation with Ms. Reneau during his FMLA leave.

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12. On November 19, 2010, Mr. Cunningham received a certified letter from Ms. Reneau terminating his employment.

COUNT I

VIOLATION OF THE FAMILY AND MEDICAL LEAVE ACT

29 U.S.C. § 2601 et. seq.

13. Mr. Cunningham incorporates by reference and re-alleges each of the foregoing statements as if fully rewritten.

14. Mr. Cunningham is an eligible employee as defined by 29 U.S.C. § 2611(2).

15. OPERS is an employer as defined by 29 U.S.C. § 2611(4).

16. Mr. Cunningham had a serious health condition as defined by 29 U.S.C. § 2611(11).

17. Mr. Cunningham was entitled to leave pursuant to 29 U.S.C. § 2612(a)(1)(D).

18. OPERS's termination of Mr. Cunningham's employment constituted malicious and willful interference with Mr. Cunningham's right to a leave of absence pursuant to 29 U.S.C. § 2612(a)(1)(D).

19. OPERS's termination of Mr. Cunningham's employment constituted malicious and willful interference with Mr. Cunningham's right to be restored to his former position, or an equivalent position, upon return from his leave of absence pursuant to 29 U.S.C. § 2614(a)(1).

20. OPERS maliciously and willfully terminated Mr. Cunningham's employment in retaliation for his exercise of his FMLA rights.

21. OPERS's termination of Mr. Cunningham's employment was a malicious and willful violation of 29 U.S.C. § 2615(a)(1) and 29 U.S.C. § 2615(a)(2), entitling Mr. Cunningham to all of the remedies provided for by 29 U.S.C. § 2617, including, but not limited

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to, lost wages or salary and benefits, interest, liquidated damages, reasonable attorney fees and costs.

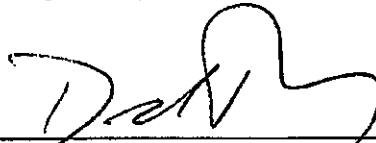
WHEREFORE: Mr. Cunningham respectfully demands judgment in his favor against OPERS and an award of relief including:

- A. Lost back wages, salary, benefits and other compensation in an amount to be proved at trial;
- B. Equitable relief including, but not limited to, front pay in an amount to be proved at trial;
- C. Pre-judgment and post-judgment interest;
- D. Liquidated damages as described in 29 U.S.C. § 2617;
- E. The costs of this action and reasonable attorney's fees; and
- F. Such other and further relief as this Court deems fair and just.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Respectfully submitted,



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Attorney for Plaintiff

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MARYELLEN O'SHAUGHNESSY

FRANKLIN COUNTY CLERK OF COURTS
GENERAL DIVISION, COURT OF COMMON PLEAS

CASE TITLE: STEPHEN P CUNNINGHAM -VS- OHIO STATE PUBLIC EMPLOYEES RETIREMENT S CASE NUMBER: 12CV005492

TO THE CLERK OF COURTS, YOU ARE INSTRUCTED TO MAKE:
CERTIFIED MAIL

DOCUMENTS TO BE SERVED:
COMPLAINT for FMLA Interference and Retaliation

UPON:
OHIO STATE PUBLIC EMPLOYEES RETIREMENT SYSTE
277 EAST TOWN STREET
COLUMBUS, OH 43215-4642

JUVENILE CASES ONLY:

INTEROFFICE MAIL TO:

☐ Public Defender's Office ☐ Franklin County Children's Services
☐ CASA ☐ CSEA

SUMMONS TYPE:

☐ Delinquency Summons ☐ A/N/D Summons ☐ Adult Summons

HEARING TYPE:

☐ Date already scheduled at : Courtroom:
☐ First available date
☐ Within to days

Electronically Requested by: DAVID N TRUMAN
Attorney for:

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FROM

MARYELLEN O'SHAUGHNESSY
FRANKLIN COUNTY CLERK OF COURTS
373 SOUTH HIGH STREET
COLUMBUS, OHIO 43215-4579
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M A I L R E C E I P

04/30/12

OHIO STATE PUBLIC EMP
277 EAST TOWN STREET
COLUMBUS, OH
43215-4642

CLERK OF COURTS

2012 MAY -1 PM 2:08

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO

12CV-04-5492 C.

STEPHEN P. CUNNINGHAM
VS
OHIO STATE PUBLIC EMP

SERVICE ITEM: 01
ORIGINAL SUMMONS

CERTIFIED
NUMBER
CIV354

91 7108 2133 3935 5384 6014

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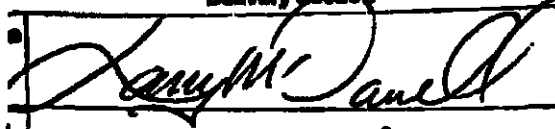
Date Produced: 05/07/2012

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COMMON PLEAS COURT
FRANKLIN CO. OHIO
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CLERK OF COURTS

FRANKLIN COUNTY CLERK OF COURTS

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